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Re: Application No.: 09/746,176 Attorney Docket No: AUS920000765US1	l
Date: Monday, May 23, 2005	
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#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 2 3 2005

In re application of: Morrison et al.

Scrial No.: 09/746,176

Filed: December 21, 2000

For: Electronic Auction Method and System Permitting Simultaneous Bids on Multiple, Different Items

35525

PATENT TRADEMARK OFFICE CUSTOMER NUMBER

Group A	rt Unit: 3627
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Examiner: Thein, Maria Teresa T.

Attorney Docket No.: AUS920000765US1

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Appeal Brief (37 C.F.R. 41.37).

A fee of \$500.00 is required for filing an Appeal Brief. Please charge this fee to IBM Corporation Deposit Account No. 09-0447. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

Respondfully submitted

Stephen R. Tkacs

Registration No. 46,430

AGENT FOR APPLICANTS

Duke W. Yec

Registration No. 34,285

YEE & ASSOCIATES, P.C.

P.O. Box 802333

Dallas, Texas 75380

(972) 385-8777

ATTORNEY FOR APPLICANTS

# RECEIVED CENTRAL FAX CENTER

Docket No. AUS920000765US1

MAY 2 3 2005

PATENT

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

§

In re application of: Morrison et al.

Serial No.: 09/746,176

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For: Electronic Auction Method and System Permitting Simultaneous Bids

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D.,,

Amelia C Turrer

#### **APPEAL BRIEF (37 C.F.R. 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on March 21, 2005.

The fees required under § 41.20(B)(2), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

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#### REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation

## RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

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#### STATUS OF CLAIMS

#### A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-48

#### B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: NONE

2. Claims withdrawn from consideration but not canceled: NONE

Claims pending: 1-48
 Claims allowed: NONE
 Claims rejected: 1-48
 Claims objected to: NONE

#### C. CLAIMS ON APPEAL

The claims on appeal are: 1-48

# **STATUS OF AMENDMENTS**

There are no amendments after final rejection.

#### SUMMARY OF CLAIMED SUBJECT MATTER

#### Independent claims 1, 17, and 33:

The presently claimed invention provides a method, computer program product, and system for permitting simultaneous submission of bids on multiple different items using a single screen image. The present invention displays, using a single screen image, a plurality of different items offered for auction simultaneously. See specification, Figures 8A and 8B; page 9, lines 14-18; page 16, line 17, to page 19, line 20; page 20, lines 16-24. The present invention permits entry of a different bid for each of a plurality of the plurality of different items using the single screen image. See specification, page 18, line 28, to page 19, line 20; page 20, lines 22-30. The present invention simultaneously submits each different bid for the plurality of the plurality of different items using the single screen image. See specification, page 22, lines 1-18.

The means recited in independent claim 17, as well as dependent claims 18-32, may be data processing hardware within server 200, client 300, and combinations thereof, as described in the specification at page 12, line 27, to page 16, line 16, operating under control of software performing with the functionality described in the specification at page 20, line 6, to page 22, line 18, or equivalent.

#### GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection on appeal are as follows:

Claims 1-48 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Rackson et al. (U.S. Patent No. 6,415,270) in view of www.auctionwatch.com.

#### ARGUMENT

#### I. 35 U.S.C. § 103, Alleged Obviousness of claims 1-48

The Final Office Action rejects claims 1-48 under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Rackson et al.* (U.S. Patent No. 6,415,270) in view of www.auctionwatch.com. This rejection is respectfully traversed.

Rackson teaches a multi-auction service that allows a seller to enter selling parameters for an item to be auctioned. The multi-auction service then transmits these parameters to a plurality of remote auction services and detects bids received through at least one of the plurality of remote auction services for the item throughout the auction. See Rackson, col. 6, line 44, to col. 7, line 17. The multi-auction service also allows a buyer to submit a bid for a single item to a plurality of remote auction services. The multi-auction service periodically checks each of the remote auction sites to determine which site and item to bid on, and places bids on the item such that a unique and optimal bid is active at only one of the remote auction services at a given moment in time and is placed in accordance with bidder rules. See Rackson, col. 7, lines 18-36.

However, as acknowledged in the Office Action, Rackson does not teach or suggest a single screen image. At best, Rackson teaches an interface for monitoring the status of bids placed in accordance with the bidder rules. See Rackson, Figure 14. However, Rackson does not teach or fairly suggest simultaneously displaying, using a single screen image, a plurality of different items offered for auction, permitting entry of a different bid for each of a plurality of the plurality of different items using the single screen image, and simultaneously submitting each different bid for each of the plurality of different items from the single screen image.

The Final Office Action notes that Rackson teaches as follows:

For example, if the seller has three items that are to be sold, bidders may be able to bid on one, two or all three of the items, where the bidder specifies in the bid the number requested and the corresponding bid price.

Rackson, col. 11, lines 12-16. Clearly, this portion of Rackson teaches that a seller may offer for sale a given number of the same item and a bidder may bid on a number of the same item. However, this portion of Rackson does not teach or suggest permitting entry of a different bid

for a plurality of different items and simultaneously submitting a plurality of bids for a plurality of different items using a single screen image.

The Final Office Action also notes that Rackson teaches the following:

For example, an Internet-based interface 500 may be provided for the bidder 8 such that the bidder (Jon) can view his selected item type 502, and the rules in force 510 and the selected remote auction service items 520 being tracked (see FIG. 14).

Rackson, col. 25, line 65, to col. 26, line 2. FIG 14 is as follows:

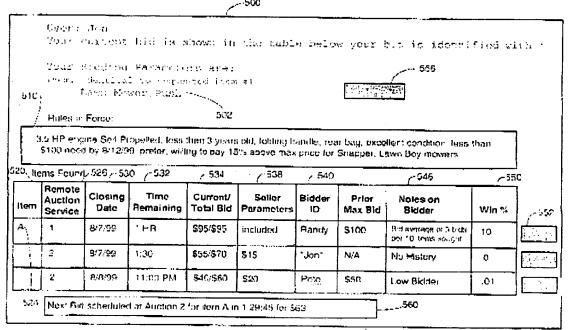


Figure 14

Clearly, this portion of *Rackson* teaches that a bidder may view an Internet-based interface that presents a single bid for a single item in combination with other bids by other bidders. However, this portion of *Rackson* does not teach or suggest permitting entry of a different bid for a plurality of different items and simultaneously submitting a plurality of bids for a plurality of different items using a single screen image.

The Final Office Action alleges these features are taught by the *auctionwatch.com* reference on pages 13 and 22. After inspection of the many pages of printed reference material, Appellants cannot identify specific pages to which the Final Office Action appears to be referring. Which page is page 13? Is it 1 of 3? Is it 2 of 2? Is it 1 of 1? Is it 3 of 7? The

Examiner provided 34 different Web pages, 88 printed pages in all. These 88 printed pages are not numbered consecutively so that one could identify page 13 or page 22.

However, the auctionwatch.com reference does teach an auction manager service that allows sellers to transmit parameters to a plurality of remote auction services. The auction manager service also allows the seller to manage post-sale information, manage customers, import images, etc. Thus, auctionwatch.com appears to merely supplement the seller-based features of Rackson, which is irrelevant to the claimed invention, which provides a single screen image for entering and submitting a plurality of bids for a plurality of items. While the auctionwatch.com reference does show screen images that may be used to enter auction template information, manage inventory, upload images, and so forth, auctionwatch.com does not provide a single screen image for entering bids on a plurality of items and submitting the plurality of bids to remote auction services.

For example, note the following section of a FAQ (frequently asked questions) for buyers (bidders):

## Q How do I bid during an online auction?

After you've read the description thoroughly and contacted the seller about any questions you may have, find the bidding box on the auction page. Fill in the appropriate information (your username, password, bid amount, etc.) and click on the appropriate button to submit your bid. That's it. Most sites will send email confirmation of your bid.

Back to the top

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See: http://web.archive.org/web/20000815053856/www.auctionwatch.com/help/gettingstarted/buying-faq.html The auctionwatch.com site provides auction manager tools that allow a seller to establish auctions with a plurality of auction sites. For example, auctionwatch.com provides image hosting, templates, and the like, that assist a seller in building an auction such that the auction may be established with a plurality of auction sites. However, once an auction begins, the bidder must submit a separate bid using a separate auction page for each item of interest. The auctionwatch.com site clearly does not provide a single screen image for simultaneously submitting each different bid for each of a plurality of different items, as in the presently claimed invention.

Rackson and auctionwatch com, taken alone or in combination, fail to teach or suggest simultaneously displaying, using a single screen image, a plurality of different items offered for auction, permitting entry of a different bid for each of a plurality of the plurality of different items using the single screen image, and simultaneously submitting each different bid for each of the plurality of different items from the single screen image, as recited in claim 1, for example. Therefore, even if one were to combine Rackson and auctionwatch.com, the proposed combination would not form the presently claimed invention. Rather, the combination would provide a series of screen images that may be used by a seller to initiate an auction on a plurality of remote auction services, which is not equivalent to the presently claimed invention.

Since the applied references, taken individually or in combination, fail to teach or suggest each and every claim limitation, the proposed combination of *Rackson* and *auctionwatch.com* does not render claim 1, for example, obvious. Independent claims 17 and 33 recite subject matter addressed above with respect to claim 1 and are allowable for at least the same reasons. Since claims 2-16, 18-32, and 39-48 depend from claims 1, 17, and 33, the same distinctions between *Rackson* and *auctionwatch.com* and the invention recited in claims 1, 17, and 33 apply for these claims. Additionally, claims 2-16, 18-32, and 34-48 recite other additional combinations of features not suggested by the reference.

Therefore, Appellants respectfully request that the rejection of claims 1-48 under 35 U.S.C. § 103 not be sustained.

#### IA. 35 U.S.C. § 103, Alleged Obviousness of claims 9, 25, and 41

With respect to claims 9, 25, and 41, the Final Office Action alleges that *Rackson* teaches receiving the different bid for each of the plurality of different items and simultaneously displaying a confirmation for the different bids using a second single screen image at col. 12, line 47, to col. 13, line 5. The cited portion of *Rackson* states:

If the bidder 20 makes a bid at remote auction service 12 (step 220), the multi-auction service 30 detects the bid (step 222) by watching each of the items being auctioned by each of the remote auction services to detect when a bid occurs on that item. In the preferred embodiment, this detection may be based on the reception of a message generated by the remote auction service whenever the item receives a bid. This message may be an email notification message, a phone call, instant message to a web

browser, a pager message or any other type of communication generated from the remote auction service. Alternatively the detection may be based upon data updates at the remote auction service, where the update reflects a change in the bid amount that is detectable remotely by the multi-auction service. The multiauction service may use the functionality provided by the remote auction service where a bid causes current bidders or the seller to be notified of bids for the item. If the remote auction does not support this type of notification process the multi-auction service may periodically request a refresh of the bid information for the item. In this manner, a plurality of virtual connections may be established between the remote auction service (web site for Internet-based auctions) for each item's web page and the multiauction service, where in response to a request for a refresh of the page contents, the remote auction service prepares and sends the response containing the remote current bid information.

In the above cited portion, Rackson teaches that when a single bidder makes a single bid for a single item, confirmation is communicated to a plurality of parties, including the bidder, other bidders, and the seller. The Final Office Action proffers no explanation why confirmation of a bid on a single item is somehow equivalent to simultaneously displaying a confirmation for each of a plurality of different items using a second single screen image, as recited in claims 9, 25, and 41. Appellants submit that Rackson and auctionwatch.com fail to teach or suggest this feature. The Final Office Action does not establish a prima facie case of obviousness, because neither reference teaches or suggests this feature, and, therefore, the proposed combination would not result in the presently claimed invention.

### IB. 35 U.S.C. § 103, Alleged Obviousness of claims 10, 26, and 42

With respect to claims 10, 26, and 42, the Final Office Action alleges that even though neither reference teaches or suggests submitting a modification for each of a second plurality of the plurality of different items, Appellants have not persuasively demonstrated that the first plurality of items and the second plurality of items are critical or are anything more than one of the numerous plurality of different items that the skilled artisan would have found suitable for the purpose taught by Rackson. The Final Office Action then concludes that it would have been obvious to further modify the combination of Rackson and auctionwatch com because, "the subjective interpretation of the various plurality of different items do not patentably distinguish

the claimed invention." Appellants respectfully disagree. The burden lies squarely on the Examiner to show that each and every claim limitation would have been obvious given the teachings of Rackson and auctionwatch.com. Whether the limitations are "critical" is irrelevant. Furthermore, whether claim limitations are taught or suggested is not a "subjective interpretation." Appellants submit that neither Rackson nor auctionwatch.com teaches or suggests submitting a modification for each of a second plurality of the plurality of different items, as recited in claims 10, 26, and 42. Therefore, the proposed combination of Rackson and auctionwatch.com does not render claims 10, 26, and 42 obvious.

#### IC. 35 U.S.C. § 103, Alleged Obviousness of claims 11, 27, and 43

With respect to claims 11, 27, and 43, the Final Office Action alleges that even though neither reference teaches or suggests canceling each of a second plurality of the plurality of different items, Appellants have not persuasively demonstrated that the first plurality of items and the second plurality of items are critical or arc anything more than one of the numerous plurality of different items that the skilled artisan would have found suitable for the purpose taught by Rackson. The Final Office Action then concludes that it would have been obvious to further modify the combination of Rackson and auctionwatch.com because, "the subjective interpretation of the various plurality of different items do not patentably distinguish the claimed invention." Appellants respectfully disagree. The burden lies squarely on the Examiner to show that each and every claim limitation would have been obvious given the teachings of Rackson and auctionwatch.com. Whether the limitations are "critical" is irrelevant. Furthermore, whether claim limitations are taught or suggested is not a "subjective interpretation." Appellants submit that neither Rackson nor auctionwatch.com teaches or suggests canceling each of a second plurality of the plurality of different items, as recited in claims 11, 27, and 43. Therefore, the proposed combination of Rackson and auctionwatch.com does not render claims 11, 27, and 43 obvious.

#### ID. 35 U.S.C. § 103, Alleged Obviousness of claims 12, 28, and 44

With respect to claims 12, 28, and 44, the Final Office Action alleges that even though neither reference teaches or suggests revising each of a second plurality of the plurality of

#### II. Conclusion

In view of the above, Appellants respectfully submit that claims 1-48 are allowable over the cited prior art and that the application is in condition for allowance. Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to not sustain the rejections set forth in the Final Office Action.

Respectfully submitted,

Stephen R. Tkacs

Registration No. 46,430

YEE & ASSOCIATES, P.C.

PO Box 802333

Dallas, TX 75380

(972) 385-8777

Agent for Appellants

#### <u>CLAIMS APPENDIX</u>

The text of the claims involved in the appeal reads:

 A method in an electronic auction for permitting simultaneous submission of bids on multiple different items using a single screen image, said method comprising the steps of: simultaneously displaying, at a computer network, using a single screen image, a plurality of different items offered for auction;

permitting entry of a different bid for each of a plurality of said plurality of different items using said single screen image; and

simultaneously submitting, over said computer network, each said different bid for each of said plurality of said plurality of different items from said single screen image.

- 2. The method according to claim 1, further comprising the step of offering each of said plurality of different items for auction using different ones of a plurality of auction types.
- 3. The method according to claim 2, wherein said plurality of auction types includes an interactive auction.
- 4. The method according to claim 2, wherein said plurality of auction types includes a single auction.

5. The method according to claim 2, wherein said plurality of auction types includes a

priced auction.

6. The method according to claim 1, further comprising the steps of:

offering a first one of said plurality of different items for auction using a priced auction;

offering a second one of said plurality of different items for auction using an interactive

auction; and

offering a third one of said plurality of different items for auction using a single auction.

7. The method according to claim 1, wherein said simultaneously displaying comprises

displaying, utilizing said single screen image, an offer of at least one of said plurality of different

items for auction using a single auction.

8. The method according to claim 1, wherein said simultaneously displaying comprises:

displaying, utilizing said single screen image, an offer of a first one of said plurality of

different items for auction using a single auction;

displaying, utilizing said single screen image, an offer of a second one of said plurality of

different items for auction using a priced auction; and

displaying, utilizing said single screen image, an offer of a third one of said plurality of

different items for auction using an interactive auction, wherein said first, second, and third ones

of said plurality of different items are simultaneously displayed utilizing said single screen

image.

9. The method according to claim 1, further comprising the steps of:

receiving said different bid submitted for each of said plurality of said plurality of different items using said single screen image; and

simultaneously displaying a confirmation for said different bid submitted for each of said plurality of said plurality of different items using a second single screen image.

- 10. The method according to claim 1, further comprising the step of simultaneously submitting a different bid for each one of a first plurality of said plurality of different items and submitting a modification for each one of a second plurality of said plurality of different items.
- The method according to claim 1, further comprising the step of simultaneously submitting a different bid for each one of a first plurality of said plurality of different items and cancelling each one of a second plurality of said plurality of different items.
- 12. The method according to claim 1, further comprising the step of simultaneously submitting a different bid for each one of a first plurality of said plurality of different items and revising each one of a second plurality of said plurality of different items.
- 13. The method according to claim 3, further comprising the step of permitting an entry of a proxy for at least one of said plurality of said plurality of different items utilizing said single screen image.

14. The method according to claim 13, further comprising the step of simultaneously submitting said bid for each of said plurality of said plurality of different items and said proxy for at least one of said plurality of said plurality of different items utilizing said single screen image.

- 15. The method according to claim 1, wherein the step of simultaneously displaying, using a single screen image, a plurality of different items offered for auction further comprises the step of simultaneously displaying, using said single screen image, a plurality of different offerings offered for auction, wherein an offering includes one or more items.
- 16. The method according to claim 15, further comprising the steps of: selecting a plurality of said plurality of different offerings to display to a particular user; and

simultaneously displaying, using said single screen image, only said selected plurality of said plurality of different offerings.

17. An electronic auction system for permitting simultaneous submission of bids on multiple different items using a single screen image, comprising:

a single screen image for simultaneously displaying a plurality of different items offered for auction;

means for permitting entry of a different bid for each of a plurality of said plurality of different items using said single screen image; and

- 18. The system according to claim 17, further comprising a plurality of auction types, wherein each of said plurality of different items is offered for auction using different ones of said plurality of auction types.
- 19. The system according to claim 18, wherein said plurality of auction types includes an interactive auction.
- 20. The system according to claim 18, wherein said plurality of auction types includes a single auction.
- 21. The system according to claim 18, wherein said plurality of auction types includes a priced auction.
- 22. The system according to claim 17, further comprising:

said single screen image for offering a first one of said plurality of different items for auction using a priced auction;

said single screen image for offering a second one of said plurality of different items for auction using an interactive auction; and

said single screen image for offering a third one of said plurality of different items for auction using a single auction.

- 23. The system according to claim 17, further comprising said single screen image for displaying an offer of at least one of said plurality of different items for auction using a single auction.
- 24. The system according to claim 17, further comprising:

said single screen image for displaying an offer of a first one of said plurality of different items for auction using a single auction;

said single screen image for displaying an offer of a second one of said plurality of different items for auction using a priced auction; and

said single screen image for displaying an offer of a third one of said plurality of different items for auction using an interactive auction, wherein said first, second, and third ones of said plurality of different items are simultaneously displayed utilizing said single screen image.

25. The system according to claim 17, further comprising:

said single screen image for receiving said different submitted bid for each of said plurality of said plurality of different items using said single screen image; and

a second single screen image for simultaneously displaying a confirmation for said different submitted bid for each of said plurality of said plurality of different items.

26. The system according to claim 17, further comprising said single screen image for simultaneously submitting a different bid for each one of a first plurality of said plurality of different items and submitting a modification for each one of a second plurality of said plurality of different items.

27. The system according to claim 17, further comprising said single screen image for simultaneously submitting a different bid for each one of a first plurality of said plurality of different items and for cancelling each one of a second plurality of said plurality of different items.

- 28. The system according to claim 17, further comprising said single screen for simultaneously submitting a different bid for each one of a first plurality of said plurality of different items and for revising each one of a second plurality of said plurality of different items.
- 29. The system according to claim 19, further comprising said single screen image permitting an entry of a proxy for at least one of said plurality of said plurality of different items.
- 30. The system according to claim 29, further comprising said single screen image for simultaneously submitting said bid for each of said plurality of said plurality of different items and said proxy for at least one of said plurality of said plurality of different items.
- 31. The system according to claim 17, further comprising said single screen image for simultaneously displaying a plurality of different offerings offered for auction, wherein an offering includes one or more items.
- 32. The method according to claim 31, further comprising:

  means for selecting a plurality of said plurality of different offerings to display to a
  particular user; and

said single screen image for simultaneously displaying only said plurality of said plurality of different offerings.

33. A computer readable medium including an electronic auction for permitting simultaneous submission of bids on multiple different items using a single screen image, said computer readable medium comprising:

instruction means for simultaneously displaying, using a single screen image, a plurality of different items offered for auction;

instruction means for permitting entry of a different bid for each of a plurality of said plurality of different items using said single screen image; and

instruction means for simultaneously submitting each said different bid for each of said plurality of said plurality of different items from said single screen image.

- 34. The computer readable medium according to claim 33, further comprising instruction means for offering each of said plurality of different items for auction using different ones of a plurality of auction types.
- 35. The computer readable medium according to claim 34, wherein said plurality of auction types includes an interactive auction.
- 36. The computer readable medium according to claim 34, wherein said plurality of auction types includes a single auction.

37. The computer readable medium according to claim 34, wherein said plurality of auction types includes a priced auction.

38. The computer readable medium according to claim 33, further comprising:

instruction means for offering a first one of said plurality of different items for auction using a priced auction;

instruction means for offering a second one of said plurality of different items for auction using an interactive auction; and

instruction means for offering a third one of said plurality of different items for auction using a single auction.

- 39. The computer readable medium according to claim 33, further comprising instruction means for displaying, utilizing said single screen image, an offer of one of said plurality of different items for auction using a single auction.
- 40. The computer readable medium according to claim 33, further comprising:

instruction means for displaying, utilizing said single screen image, an offer of a first one of said plurality of different items for auction using a single auction;

instruction means for displaying, utilizing said single screen image, an offer of a second one of said plurality of different items for auction using a priced auction; and

instruction means for displaying, utilizing said single screen image, an offer of a third one of said plurality of different items for auction using an interactive auction, wherein said first,

second, and third ones of said plurality of different items are simultaneously displayed utilizing said single screen image.

The computer readable medium according to claim 33, further comprising:
instruction means for receiving said different bid submitted for each of said plurality of
said plurality of different items using said single screen image; and

instruction means for simultaneously displaying a confirmation for said different bid submitted for each of said plurality of said plurality of different items using a second single screen image.

- 42. The computer readable medium according to claim 33, further comprising instruction means for simultaneously submitting a different bid for each one of a first plurality of said plurality of different items and submitting a modification for each one of a second plurality of said plurality of different items.
- 43. The computer readable medium according to claim 33, further comprising instruction means for simultaneously submitting a different bid for each one of a first plurality of said plurality of different items and cancelling each one of a second plurality of said plurality of different items.
- 44. The computer readable medium according to claim 33, further comprising instruction means for simultaneously submitting a different bid for each one of a first plurality of said

plurality of different items and revising each one of a second plurality of said plurality of different items.

- 45. The computer readable medium according to claim 35, further comprising instruction means for permitting an entry of a proxy for at least one of said plurality of different items utilizing said single screen image.
- 46. The computer readable medium according to claim 43, further comprising instruction means for simultaneously submitting said bid for each of said plurality of said plurality of different items and said proxy for at least one of said plurality of said plurality of different items utilizing said single screen image.
- The computer readable medium according to claim 34, wherein the instruction means for simultaneously displaying, using a single screen image, a plurality of different items offered for auction further comprises instruction means for simultaneously displaying, using said single screen image, a plurality of different offerings offered for auction, wherein an offering includes one or more items.
- 48. The computer readable medium according to claim 47, further comprising: instruction means for selecting a plurality of said plurality of different offerings to display to a particular user; and

instruction means for simultaneously displaying, using said single screen image, only said plurality of said plurality of different offerings.

# **EVIDENCE APPENDIX**

There is no evidence to be presented.

# RELATED PROCEEDINGS APPENDIX

There are no related proceedings.